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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL GRECCO
PRODUCTIONS INC.,

Plaintiff,

v.

TIKTOK, INC.,

Defendant.

Case No. 2:24-CV-04837-FLA-MAR

**DEFENDANT'S STATEMENTS OF
ADDITIONAL UNCONTROVERTED
FACTS IN SUPPORT OF
DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Hon. Fernando L. Aenlle-Rocha

Date: September 26, 2025

Time: 1:30pm

Courtroom: 6B

Filed concurrently with:

- (1) Opposition to Plaintiff's Motion for Partial Summary Judgment;
- (2) Statement of Genuine Disputes of Material Fact;
- (3) Declaration of Jemili Boutros;
- (4) Declaration of J. Michael Keyes; and
- (5) [Proposed] Order.

Defendant TikTok, Inc. (“TTI” or “Defendant”) hereby submits its Statement of Additional Uncontroverted Facts in support of its Opposition to Plaintiff’s Motion for Partial Summary Judgment (Dkt. 68).

All evidentiary citations herein are to either: (1) the Declaration of Jemili Boutros In Support of Defendant’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (“Boutros Decl.”); (2) the Declaration of J. Michael Keyes In Support of Defendant’s Opposition to Plaintiff’s Motion for Partial Summary Judgment (“Keyes Decl.”); (3) Defendant’s Exhibits 1–25, which are attached to the Boutros Declaration and the Keyes Declaration; or (4) the pleadings in this case.

As cited to in this Statement of Additional Uncontroverted Facts, Exhibits 1–3 are attached to the Boutros Declaration and Exhibits 4–25 are attached to the Keyes Declaration. Additionally, Exhibits 11–25 are video files submitted on a CD to the Court as noted in a Notice of Lodging filed herewith.

The Additional Uncontroverted Facts below are consecutively numbered from Plaintiff’s Uncontroverted Facts, as re-numbered in the Statement of Genuine Disputes of Material Fact filed herewith.

TTI, the TikTok Platform, and TTI’s Copyright Polices

Undisputed Fact	Evidence
82. TTI provides the TikTok platform in the United States.	Boutros Decl. ¶ 3.
83. TikTok is an online entertainment platform that allows user to create, share, and engage with content posted by other users.	Boutros Decl. ¶ 3.
84. TikTok users engage with the platform by creating and sharing videos or watching and interacting with videos posted by others.	Boutros Decl. ¶ 4.
85. [REDACTED]	Exh. 6, Boutros Depo. at 28:12-14.

Undisputed Fact	Evidence
86. [REDACTED]	Boutros Decl. ¶ 4.
87. Videos on TikTok relate to a variety of topics including politics, educational content, news, family, comedy, and users' jobs and hobbies.	Boutros Decl. ¶ 4.
88. Certain qualified TikTok users can join the Creator Program.	Dkt. 68-2, Exh. A, Boutros Depo. at 24:7-12.
89. TTI does not receive any profits from its users' monetization through the Creator Program.	Dkt. 68-2, Exh. A, Boutros Depo. at 27:5-18.
90. [REDACTED]	Boutros Decl. ¶ 12 Exh. 3 (TTI_00000331).
91. TTI received more than 400,000 copyright removal requests in 2023.	Boutros Decl. ¶ 9 Exh. 2 at 1.
92. In 2023, approximately 58% of the copyright removal requests received by TTI resulted in content being removed from TikTok.	Boutros Decl. ¶ 9. Exh. 2 at 1.
93. TTI received more than 500,000 copyright removal requests in 2024.	Boutros Decl. ¶ 9. Exh. 2 at 2.
94. In 2024, approximately 67% of the copyright requests received by TTI resulted in content being removed from TikTok.	Boutros Decl. ¶ 9. Exh. 2 at 2.
95. [REDACTED]	Dkt. 68-2, Exh. A, Boutros Depo. at 17:16-24; 30:24-31:12. Boutros Decl. ¶ 7.

Undisputed Fact	Evidence
96. [REDACTED]	Boutros Decl. ¶ 10. Dkt. 68-2, Exh. A, Boutros Depo. at 17:16-24; 44:12-21.
97. [REDACTED]	Boutros Decl. ¶ 10. Dkt. 68-2, Exh. A, Boutros Depo. at 44:12-21.
98. [REDACTED]	Boutros Decl. ¶ 10.
99. [REDACTED]	Dkt. 68-2, Exh. A, Boutros Depo. at 65:6-11. Boutros Decl. ¶ 10.
100. [REDACTED]	Exh. 6, Boutros Depo. at 108:23-25; Boutros Decl. ¶ 10.
101. Upon review of the notices, TTI determined the alleged acts of infringement are fair use and did not need to be removed.	Boutros Decl. ¶ 11.

Plaintiff Michael Grecco Productions, Inc. (“Plaintiff” or “MGP”),
the Copyrights, and the Asserted Works

Undisputed Fact	Evidence
102. Each of the Asserted Works ¹ is a photograph of one or more celebrities created between 1980 and 2004.	Dkt. 46 ¶¶ 12-54. Exh. 4, Grecco Depo. at 78:20-79:1; 97:5-19; 100:23-101:1; 102:16-19; 113:8-14; 119:2-4; 119:15-120:1
103. Grecco was commissioned by third parties to take each of the Asserted Works.	Exh. 4, Grecco Depo. at 33:14-16 (Q: . . . you were commissioned to take those photographs; right? A: That is correct); 60:9-17; 103:6-10; 73:1-13;

¹ “Asserted Works” means and refers to the 22 photographs at issue in this case.

Undisputed Fact	Evidence
	69:6-15; 111:5-16; 111:21-112:7; 112:19-113:7.
104. Grecco was commissioned by the studio MCA Television Group (“MCA”) to capture images relating to the TV show <i>Xena Warrior Princess</i> .	Exh. 4, Grecco Depo. at 60:9-17. Exh. 9, Grecco Depo. Exh. 13.
105. The “Assignment Invoice” with MCA provides: “Unlimited usage rights are granted to the client [MCA]. Michael Grecco Retains the copyright to all photographs. Michael Grecco also retains the right to use any photograph for personal portfolio and promotional use.”	Exh. 9, Grecco Depo. Exh. 13.
106. Grecco was commissioned by USA Networks to capture images relating to the TV show <i>Sliders</i> .	Exh. 10, Grecco Depo. Exh. 14, Exh. 4, Grecco Depo. at 169:25–170:11; 176:25–177:3.
107. The Assignment Invoice with USA Networks provides: “Unlimited usage rights are granted to the client. Michael Grecco retains the copyright to all photographs. Michael Grecco also retains the right to use any photograph for personal portfolio and promotional use.”	Exh. 10, Grecco Depo. at Exh. 14. Exh. 4, Grecco Depo. at 169:25–170:11; 176:25–177:3.
108. Grecco was commissioned by Fox Broadcasting Company (“Fox”) to capture images relating to the TV show <i>The X-Files</i> .	Exh. 4, Grecco Depo. at 189:15–22. Exh. 8 (Fox Invoice). Keyes Decl. ¶ 6.
109. The Assignment Invoice with Fox provides: “F.B.C. all rights for publicity and advertising only. Michael Grecco Photography, Inc. retains the Copyright to all photographs and the right to use any photographs for personal portfolio and promotional use.”	Exh. 8 (Fox Invoice).

Undisputed Fact	Evidence
110. Grecco has licensed the <i>Xena</i> and <i>The X-Files</i> photographs “with the active consent or indifference of the studios.”	Exh 7, Prior Grecco Declaration at ¶¶ 7-8.
111. Grecco did not assign to Plaintiff photographs created after 1998.	Exh. 4, Grecco Depo. at 55:25-56:11.
112. Grecco testified at his deposition that he is not an employee of Plaintiff.	Exh. 4, Grecco Depo. at 21:18-22.
113. Grecco testified his status as an employee would be shown by an operating agreement.	Exh. 4, Grecco Depo. at 55:2-20.
114. The operating agreement has not been produced in this case.	Keyes Decl. ¶ 9.

The Alleged Copyright Infringement By TikTok Users

Undisputed Fact	Evidence
115. Twenty-four TikTok users are alleged to infringe Plaintiff’s copyrights.	Dkt. 46-14. Exh. 4, Grecco Depo. at 120:17-121:3.
116. The TikTok users created the allegedly infringing content.	Dkt. 46 ¶ 60. Boutros Decl. ¶ 11.
117. TTI itself did not create or post any of the allegedly infringing content.	Boutros Decl. ¶¶ 6, 11. Exh. 4, Grecco Depo. at 120:17-121:7.
118. Nineteen TikTok users are alleged to infringe by using an Asserted Work in a video posted by the user to TikTok.	Dkt. 46-14 at 2-37, 39-47, 50-56, 66-88, 90-115.
119. User bellamy227 is accused of infringing the First Photograph by using it in a video.	Dkt. 46-14 at 2. Exh. 4, Grecco Depo. at 216:15–217:1.
120. The video posted by bellamy227 is 21 seconds long.	Dkt. 46-14 at 2. Exh. 4, Grecco Depo. at 215:13-14.

Undisputed Fact	Evidence
121. The First Photograph is shown for 2 seconds in the video posted by bellamy227.	Dkt 68-3 at 29.
122. In the video, bellamy227 is commenting that her Halloween costume is inspired by <i>Xena</i> .	Exh. 4, Grecco Depo. at 216:15–217:1.
123. User filmeseseriesxz is accused of infringing the First Photograph by using it in a video.	Dkt. 46-14 at 5. Exh. 5, Yamada Depo. at 119:9–11. Exh. 4, Grecco Depo. at 225:1–15.
124. The video posted by filmeseseriesxz is 43 seconds long.	Dkt. 46-14 at 5. Exh. 5, Yamada Depo. at 118:22-24.
125. The First Photograph is shown for 3 seconds in the video posted by filmeseseriesxz.	Dkt. 68-3 at 88.
126. In filmeseseriesxz’s video, there is Portuguese text appearing over the First Photograph.	Dkt. 46-14 at 5. Exh. 5, Yamada Depo. at 119:9–11. Exh. 4, Grecco Depo. at 225:1–15.
127. In filmeseseriesxz’s video, the Portuguese text reads “Xena and Gabrielle were girlfriends and I can prove it.”	Keyes Decl. ¶ 11.
128. User gsp.xena is accused of infringing the Second Photograph by using it in a video.	Dkt. 46-14 at 16; Dkt. 68-3 at 32; Exh. 11 (TTI_000390)
129. The video posted by gsp.xena is 9 seconds long.	Dkt. 46-14 at 16; Exh. 11 (TTI_00000390)
130. The Second Photograph is shown for 2 seconds in the video posted by gsp.xena.	Exh. 11 (TTI_00000390)
131. Gsp.xena’s video includes audio added by the user.	Exh. 5, Yamada Depo. at 122:13–123:14; Exh. 11 (TTI_00000390)
132. In the video, gsp.xena is explaining that her dog is named after <i>Xena</i> .	Exh. 5, Yamada Depo. at 122:13–123:14 Exh. 11 (TTI_00000390)

Undisputed Fact	Evidence
133. User tigresha_of.fo.zi.ell is accused of infringing the Second Photograph by using it in a video.	Dkt. 46-14 at 18. Exh. 12 (TTI_00000401). Exh. 4, Grecco Depo. at 234:9–13; 236:9–12.
134. The video posted by tigresha_of.fo.zi.ell is 8 seconds long.	Dkt. 46-14 at 18. Exh. 12 (TTI_00000401). Exh. 5, Yamada Depo. at 126:4-6.
135. The Second Photograph appears for 2 seconds in the video posted by tigresha_of.fo.zi.ell.	Exh. 12 (TTI_00000401). Exh. 4, Grecco Depo. at 236:9-12.
136. tigresha_of.fo.zi.ell’s video includes foreign language text over the Second Photograph.	Exh. 12 (TTI_00000401). Exh. 5, Yamada Depo. at 125:11–13.
137. The text in tigresha_of.fo.zi.ell’s video translates to “my role model Xena.”	Exh. 12 (TTI_00000401). Keyes Decl. ¶ 12.
138. User christineb_2469 is accused of infringing the Third Photograph by using it in a video.	Dkt. 46-14 at 22. Exh. 13 (TTI_00000325). Exh. 4, Grecco Depo. at 236:21–238:12.
139. The video posted by chrisineb_2469 is 8 seconds long.	Dkt. 46-14 at 22. Exh. 13 (TTI_00000325).
140. The Third Photograph appears for 1 second in the video posted by christineb_2469.	Exh. 13 (TTI_00000325). Exh. 4, Grecco Depo. at 237:5-9.
141. Christine_2469’s video features two girls who pretend to faint when shown different photos of Andy Garcia.	Exh. 13 (TTI_00000325). Exh. 4, Grecco Depo. at 237:15–238:11.
142. User 90sgirlgroups is accused of infringing the Fourth Photograph by using it in a video.	Dkt. 46-14 at 27. Dkt. 68-3 at 54. Exh. 14 (TTI_00000317). Exh. 4, Grecco Depo. at 243:16–21;
143. The video posted by 90sgirlgoups is 29 seconds long.	Dkt. 46-14 at 27. Exh. 14 (TTI_00000317). Exh. 4, Grecco Depo. at 243:16-17.

Undisputed Fact	Evidence
144. The Fourth Photograph appears for 2 seconds in the video posted by 90sgirlgroup.	Exh. 14 (TTI_00000317). Exh. 4, Grecco Depo. at 243:18-21.
145. The video posted by 90sgirlgroups includes the text “En Vogue Then vs Now.”	Exh. 14 (TTI_00000317). Exh. 4, Grecco Depo. at 243:22-25.
146. The video posted by 90sgirlgroups shows multiple images of the members of En Vogue over the years.	Exh. 14 (TTI_00000317). Exh. 4, Grecco Depo. at 244:7-10.
147. User iam4ranny72 is accused of infringing the Fifth Photograph by using it in a video.	Dkt. 46-14 at 37. Dkt. 68-3 at 59. Exh. 4, Grecco Depo. at 249:16-251:4. Exh. 15 (TTI_00000321).
148. The video posted by iam4ranny72 is 49 seconds long.	Dkt. 46-14 at 37. Exh. 15 (TTI_00000321).
149. The Fifth Photograph appears for 2 seconds in the video posted by iam4ranny72.	Exh. 15 (TTI_00000321). Dkt. 68-3 at 59. Exh. 4, Grecco Depo. at 249:22–250:4.
150. The video posted by iam4ranny includes the text “Til Tuesday One Hit Wonder.”	Dkt. 46-14 at 37. Exh. 15 (TTI_00000321).
151. In the video, iam4ranny is commenting on its belief that Til Tuesday is a one hit wonder.	Exh. 4, Grecco Depo. at 250:22–251:4.
152. The video posted by iam4ranny72 includes audio added by the user.	Exh. 4, Grecco Depo. at 250:18-21.
153. User henrybelcaster is accused of infringing the Seventh Photograph by using it in a video.	Dkt. 46-14 at 39. Dkt. 68-3 at 36. Exh. 16 (TTI_00000329). Exh. 5, Yamada Depo. at 136:13-137:2.
154. The video posted by henrybelcaster is 60 seconds long.	Dkt. 46-14 at 39. Exh. 16 (TTI_00000329). Exh. 5, Yamada Depo. at 136:10-12.

Undisputed Fact	Evidence
155. The Seventh Photograph appears for 2 seconds in the video posted by henrybelcaster.	Dkt. 68-3 at 36. Exh. 16 (TTI_00000329).
156. The video posted by henrybelcaster explains how the Google company was formed.	Exh. 5 (TTI_00000329).
157. The video posted by henrybelcaster includes narration explaining who Larry Page and Sergey Brin are while the Seventh Photograph is shown.	Exh. 16 (TTI_00000329). Exh. 5, Yamada Depo. at 136:21–137:2.
158. The video posted by henrybelcaster includes text displayed over the Seventh Photograph.	Dkt. 46-14 at 39. Exh. 16 (TTI_00000329). Exh. 5, Yamada Depo. at 137:8-10.
159. User paulaandwinston1998 is accused of infringing the Eighth Photograph by using it in a video.	Dkt. 46-14 at 44. Dkt. 68-3 at 39. Exh. 17 (TTI_00000322). Exh. 5, Yamada Depo. at 140:21–141:19.
160. The video posted by paulaandwinston1998 is 8 seconds long.	Dkt. 46-14 at 44. Exh. 17 (TTI_00000322).
161. The Eighth Photograph appears for 2 seconds in the video posted by paulaandwinston1998.	Exh. 17 (TTI_00000322). Dkt. 68-3 at 39.
162. The Eighth Photograph is cropped in the video posted by paulaandwinston1998.	Dkt. 46-14 at 44. Exh. 17 (TTI_00000322). Exh. 5, Yamada Depo. at 141:2-13.
163. paulaandwinston1998 added a filter or effect to the Eighth Photograph to make it appear that hearts are coming out of Xena’s head.	Exh. 17 (TTI_00000322). Exh. 5, Yamada Depo. at 141:14-19.
164. User wherearetheyfilms is accused of infringing the Ninth Photograph by using it in a video.	Dkt. 46-14 at 46. Dkt. 68-3 at 45. Exh. 18 (TTI_00000319). Exh. 5, Yamada Depo. at 143:14–144:20.

Undisputed Fact	Evidence
165. The video posted by wherearetheyfilms is 14 seconds long.	Dkt. 46-14 at 46. Exh. 18 (TTI_00000319).
166. The Ninth Photograph appears for 2 seconds in the video posted by wherearetheyfilms.	Exh. 18 (TTI_00000319). Dkt. 68-3 at 45.
167. In the video posted by wherearetheyfilms, the Ninth Photograph includes a Xena Warrior Princess logo used by the studio.	Dkt. 46-14 at 46. Exh. 18 (TTI_00000319). Exh. 5, Yamada Depo. at 144:3-20.
168. In the video posted by wherearetheyfilms, the text “Where are they now: Xena: Warrior Princess” is displayed over the Ninth Photograph.	Dkt. 46-14 at 46. Exh. 18 (TTI_00000319). Exh. 5, Yamada Depo. at 144:3-8.
169. In the video posted by wherearetheyfilms, the user is providing commentary to its followers.	Exh. 18 (TTI_00000319). Exh. 5, Yamada Depo. at 144:9-11.
170. User myndcruzer2023 is accused of infringing the Eleventh Photograph by using it in a video.	Dkt. 46-14 at 50. Dkt. 68-3 at 26. Exh. 19 (TTI_00000327).
171. The video posted by myndcruzer2023 is 9 seconds long.	Dkt. 46-14 at 50. Exh. 19 (TTI_00000327).
172. The Eleventh Photograph appears for 2 seconds in the video posted by myndcruzer2023.	Dkt. 68-3 at 26. Exh. 19 (TTI_00000327).
173. The video posted by myndcruzer2023 includes audio added by the user.	Dkt. 46-14 at 50. Exh. 19 (TTI_00000327).
174. The video posted by myndcruzer2023 includes a text box reading “Does anyone remember SLIDERS?”	Dkt. 46-14 at 50. Exh. 19 (TTI_00000327). Exh. 5, Yamada Depo. at 149:11–150:5
175. User bg_ijam is accused of infringing the Twelfth Photograph by using it in a video.	Dkt. 46-14 at 53. Dkt. 68-3 at 56. Exh. 20 (TTI_00000326).

Undisputed Fact	Evidence
176. The video posted by bg_ijam is 13 seconds long.	Dkt. 46-14 at 53. Exh. 20 (TTI_00000326). Exh. 5, Yamada Depo. at 150:21–151:1.
177. The Twelfth Photograph appears for 2 seconds in the video posted by bg_ijam.	Dkt. 68-3 at 56. Exh. 20 (TTI_00000326).
178. The video posted by bg_ijam includes audio added by the user.	Dkt. 46-14 at 53. Exh. 20 (TTI_00000326).
179. The video posted by bg_ijam includes several images of actress Gillian Anderson at different points in her career.	Exh. 20 (TTI_00000326).
180. User iohndepp is accused of infringing the Thirteenth Photograph by using it in a video.	Dkt 46-14 at 55.
181. The video posted by iohndepp is 6 seconds long.	Dkt 46-14 at 55.
182. The Thirteenth Photograph appears for 2 seconds in the video posted by iohndepp.	Dkt 46-14 at 55.
183. The video posted by iohndepp includes audio added by the user.	Dkt 46-14 at 55.
184. The video posted by iohndepp includes a caption referencing how attractive Johnny Depp is.	Dkt 46-14 at 55.
185. The Thirteenth Photograph is cropped in the video posted by iohndepp.	Dkt 46-14 at 55. Dkt. 46 ¶ 36.
186. User rogerior.official is accused of infringing the Sixteenth Photograph by using it in a video.	Dkt. 46-14 at 66. Exh. 21 (TTI_00000323).
187. The video posted by rogerior.official is 9 seconds long.	Dkt. 46-14 at 66. Exh. 21 (TTI_00000323).

Undisputed Fact	Evidence
188. In the video posted by rogerior.official, the Sixteenth Photograph appears in approximately the top third of the video and is approximately a quarter of the width of the video.	Dkt. 46-14 at 66. Exh. 21 (TTI_00000323). Exh. 5, Yamada Depo. at 156:4-16.
189. The video posted by rogerior.official includes audio added by the user.	Dkt. 46-14 at 66. Exh. 21 (TTI_00000323).
190. The majority of the video posted by rogerior.official is comprised of a foreign language quote.	Dkt. 46-14 at 66. Exh. 21 (TTI_00000323). Exh. 5, Yamada Depo. at 156:17—157:2. Keyes Decl. ¶ 13.
191. User nicolemiraswriting is accused of infringing the Seventeenth Photograph by using it in a video.	Dkt. 46-14 at 83. Exh. 22 (TTI_00000316).
192. The video posted by nicolemiraswriting is 77 seconds long.	Dkt. 46-14 at 83. Exh. 22 (TTI_00000316).
193. The Seventeenth Photograph appears for 3 seconds in the video posted by nicolemiraswriting.	Dkt. 68-3 at 74. Exh. 22 (TTI_00000316).
194. The video posted by nicolemiraswriting explains the meaning of the term “gothic.”	Dkt. 46-14 at 83. Exh. 22 (TTI_00000316).
195. The video posted by nicolemiraswriting references the Seventeenth Photograph to explain how the term “gothic” is used in connection with “gothic rock.”	Dkt. 46-14 at 83. Exh. 22 (TTI_00000316).
196. The Seventeenth Photograph is cropped to approximately half of the original photo in the video posted by nicolemiraswriting.	Dkt. 46-14 at 83. Exh. 22 (TTI_00000316). Exh. 5, Yamada Depo. at 159:5-19.

Undisputed Fact	Evidence
197. User scullysbae is accused of infringing the Nineteenth Photograph by using it in a video slideshow.	Dkt. 46-14 at 90. Dkt. 68-3 at 83.
198. The video slideshow posted by scullysbae includes several photographs from <i>The X-Files</i> .	Dkt. 68-3 at 83.
199. The Nineteenth Photograph is cropped in the video slideshow posted by scullysbae.	Dkt. 46-14 at 90. Dkt. 46 ¶ 48.
200. The video slideshow posted by scullysbae includes audio added by the user.	Dkt. 46-14 at 90.
201. The video slideshow posted by scullysbae includes text appearing over the Nineteenth Photograph.	Dkt. 46-14 at 90.
202. User ryanbtalkstv is accused of infringing the Twentieth Photograph by using it in a video.	Dkt. 46-14 at 93. Dkt. 68-3 at 94. Exh. 23 (TTI_00000324).
203. The video posted by ryanbtalkstv is 28 seconds long.	Dkt. 46-14 at 93. Exh. 23 (TTI_00000324).
204. The Twentieth Photograph appears for 10 seconds in the video posted by ryanbtalkstv.	Dkt. 46-14 at 93. Dkt. 68-3 at 94. Exh. 23 (TTI_00000324).
205. In the video posted by ryanbtalkstv, text appears over Twentieth Photograph while it is shown.	Dkt. 46-14 at 93. Exh. 23 (TTI_00000324). Exh. 5, Yamada Depo. at 164:6-9.
206. In the video posted by ryanbtalkstv, the user appears over Twentieth Photograph while it is shown.	Dkt. 46-14 at 93. Exh. 23 (TTI_00000324). Exh. 5, Yamada Depo. at 163:21–164:5.
207. In the video posted by ryanbtalkstv, the user is narrating as the Twentieth Photograph is shown.	Exh. 23 (TTI_00000324). Exh. 5, Yamada Depo. at 163:25–164:2.

Undisputed Fact	Evidence
208. In the video posted by ryanbtalkstv, the user is discussing <i>The X-Files</i> .	Exh. 23 (TTI_00000324).
209. User shoyb78 is accused of infringing the Twenty-First Photograph by using it in a video.	Dkt. 46-14 at 102. Exh. 24 (TTI_00000400).
210. The video posted by shoyb78 is 27 seconds long.	Dkt. 46-14 at 102. Exh. 24 (TTI_00000400).
211. In the video, shoyb78 is teaching viewers how to play <i>The X-Files</i> theme song on the piano.	Dkt. 46-14 at 102. Exh. 24 (TTI_00000400).
212. In the video posted by shoyb78, the Twenty-First Photograph is cropped.	Dkt. 46-14 at 102. Exh. 24 (TTI_00000400). Exh. 5, Yamada Depo. at 167:17-24.
213. User shoyb78 does not use the entirety of the Twenty-First Photograph in the video.	Exh. 24 (TTI_00000400). Exh. 5, Yamada Depo. at 167:17-24.
214. In the video posted by shoyb78, the Twenty-First Photograph takes up approximately the top half of the video.	Dkt. 46-14 at 102. Exh. 24 (TTI_00000400). Exh. 5, Yamada Depo. at 167:25–168:3.
215. User dfwbass is accused of infringing the Twenty-Second Photograph by using it in a video.	Dkt. 46-14 at 106. Dkt. 68-3 at 81. Exh. 25 (TTI_00000330).
216. The video posted by dfwbass is 62 seconds long.	Dkt. 46-14 at 106. Exh. 25 (TTI_00000330).
217. The Twenty-Second Photograph appears for 5 seconds in the video posted by dfwbass.	Dkt. 68-3 at 81. Exh. 25 (TTI_00000330).
218. The Twenty-Second Photograph is black and white.	Dkt. 46 ¶ 54.
219. In the video posted by dfwbass, the Twenty-Second Photograph has been edited with sepia tones.	Dkt. 46-14 at 106. Exh. 25 (TTI_00000330). Exh. 5, Yamada Depo. at 170:2-12.

Undisputed Fact	Evidence
220. The video posted by dfwbass relates to popular female rockers.	Exh. 25 (TTI_00000330).
221. In the video posted by dfwbass, the text “5 female bass rockers” appears over the Twenty-Second Photograph.	Dkt. 46-14 at 106. Exh. 25 (TTI_00000330). Exh. 5, Yamada Depo. at 170:13-16.
222. Five TikTok users are alleged to infringe by using an Asserted Work as a thumbnail image on their TikTok profiles.	Dkt. 46-14 at 38, 48-49, 57-64, 65, 89. Exh. 5, Yamada Depo. at 133:19-134:3; 145:19-3; 153:6-11; 154:15-20; 160:16-161:2
223. User weloverealmovies is alleged to infringe the Sixth Photograph.	Dkt. 46-14 at 38. Exh. 5, Yamada Depo. at 134:1-20.
224. User weloverealmovies uses a cropped version of the Sixth Photograph as a profile picture on TikTok.	Dkt. 46-14 at 38. Exh. 5, Yamada Depo. at 134:1-20
225. User weloverealmovies does not use the entirety of the Sixth Photograph in the profile picture.	Dkt. 46-14 at 38. Exh. 5, Yamada Depo. at 134:1-20
226. User roxxxyvalkar is alleged to infringe the Tenth Photograph.	Dkt. 46-14 at 48. Exh. 5, Yamada Depo. at 145:19-146:14.
227. User roxxxyvalkar uses a cropped version of the Tenth Photograph as a profile picture on TikTok.	Dkt. 46-14 at 48. Exh. 5, Yamada Depo. at 145:19-146:14.
228. User roxxxyvalkar does not use the entirety of the Tenth Photograph in the profile picture.	Dkt. 46-14 at 48. Exh. 5, Yamada Depo. at 145:19-146:14.
229. User mj_impr_be is alleged to infringe the Fourteenth Photograph.	Dkt. 46-14 at 57. Exh. 5, Yamada Depo. at 153:6-18.
230. User mj_impr_be uses a cropped version of the Fourteenth Photograph as a profile picture on TikTok.	Dkt. 46-14 at 57. Exh. 5, Yamada Depo. at 153:6-18.
231. User mj_impr_be does not use the entirety of the Fourteenth Photograph in the profile picture.	Dkt. 46-14 at 57. Exh. 5, Yamada Depo. at 153:6-18.

Undisputed Fact	Evidence
232. User mjforever.1958 is alleged to infringe the Fifteenth Photograph.	Dkt. 46-14 at 65. Exh. 5, Yamada Depo. at 154:15-20.
233. User mjforever.1958 uses a cropped version of the Fifteenth Photograph as a profile picture on TikTok.	Dkt. 46-14 at 65. Exh. 5, Yamada Depo. at 154:15-20.
234. User mjforever.1958 does not use the entirety of the Fifteenth Photograph in the profile picture.	Dkt. 46-14 at 65. Exh. 5, Yamada Depo. at 154:15-20.
235. User rodgerskinaro is alleged to infringe the Eighteenth Photograph.	Dkt. 46-14 at 89. Exh. 5, Yamada Depo. at 160:16-161:12.
236. User rodgerskinaro uses a cropped version of the Eighteenth Photograph as a profile picture on TikTok.	Dkt. 46-14 at 89. Exh. 5, Yamada Depo. at 160:16-161:12.
237. User rodgerskinaro does not use the entirety of the Eighteenth Photograph in the profile picture.	Dkt. 46-14 at 89. Exh. 5, Yamada Depo. at 160:16-161:12.
238. The top of Jet Li's head is not visible in rodgerskinaro's profile picture.	Dkt. 46-14 at 89. Exh. 5, Yamada Depo. at 160:16-161:12.
239. The profile pictures are small, thumbnail sized images on TikTok.	Dkt. 46-14 at 38, 48-49, 57-64, 65, 89. Exh. 5, Yamada Depo. at 133:19-134:3; 145:19-3; 153:6-11; 154:15-20; 160:16-161:2
240. Ms. Yamada testified the uses are not commercial.	Exh. 5, Yamada Depo. at 44:2-10; 118:2-4; 120:1-24; 123:15-17; 126:22-24; 128:12-14; 132:25-133:2; 150:6-7; 157:3-5; 159:20-23; 164:20-23; 168:14-22; 170:23-24.
241. If Plaintiff thought the uses were commercial, it would have sent cease and desist letters to each User.	Exh. 5, Yamada Depo. at 33:12-16; 44:2-10.

**Plaintiff Did Not Consider Fair Use Before
Submitting Takedown Notices to TTI**

Undisputed Fact	Evidence
242. MGP has a team of independent contractors who search for infringing uses of Plaintiff's works.	Exh. 4, Grecco Depo. at 22:1-6; 26:15-21 (Q: How did you discover the allegedly infringing works in this case? A: . . . we have a team of people that does it.); 27:16-19. Exh. 5, Yamada Depo. 17:14-22.
243. Plaintiff uses a template to prepare its takedown notices (herein after "Takedown Template").	Exh. 4, Grecco Depo. at 259:1-6 ("It's a form. The information gets plugged into it."); 259:20-260:3. Exh. 5, Yamada Depo. at 112:1-24.
244. Plaintiff's contractors input information into the Takedown Template, which includes the same boilerplate language.	Exh. 4, Grecco Depo. at 259:1-6. Exh. 5, Yamada Depo. at 113:3-7.
245. The takedown notices sent to TTI in this case were prepared using Plaintiff's Takedown Template.	Exh. 4, Grecco Depo. at 258:23-259:6. Exh. 5, Yamada Depo. at 175:2-176:1.
246. The only information that differs between the takedown notices sent by Plaintiff to TTI is the identification of the work, location, file, video stamp, and infringing post.	Exh. 5, Yamada Depo. at 175:9-13 (Q: . . . what information would change in any given takedown notice? A: It would be work, location, file, video stamp, and infringer, infringing post.)
247. The takedown notices MGP sent to TTI contain the statement: "I have a good faith belief that the use of the material that appears on the service is not authorized by myself, the copyright owner, my agent, or by operation of law" (hereinafter, the "good faith belief statement").	Dkt. 68-3, Exh. B. Exh. 5, Yamada Depo. at 175:23-176:1.
248. The good faith belief statement in the takedown notices sent to TTI is from Plaintiff's Takedown Template.	Dkt. 68-3, Exh. B. Exh. 5, Yamada Depo. at 175:23-176:1.

Undisputed Fact	Evidence
249. Plaintiff's takedown process is automated for content on TikTok.	Exh. 4, Grecco Depo. at 208:19-209:7 ("its automated that, if there's no license, that they send a takedown notice").
250. If a user does not have a license from Plaintiff to use MGP's photographs on TikTok, MGP sends a takedown notice to TTI.	Exh. 4, Grecco Depo. at 208:19-209:7; 210:16-20 (Q: Who made the determination that it was infringing? A: Sans license and sans being tagged, its infringing so that's my rule.).
251. Grecco is responsible for determining whether a potentially infringing use is a fair use.	Exh. 5, Yamada Depo. at 182:3-5 (Q: And ultimately is it Michael who determines if something is or is not fair use? A: Yes.)
252. Grecco did not review the takedown notices before they were submitted to TTI.	Exh. 4, Grecco Depo. at 258:23-25.
253. Grecco did not review each allegedly infringing use before the takedown notices were submitted to TTI.	Exh. 4, Grecco Depo. at 209:15-210:2 ("I did not look at every one, and I did not approve every one.").
254. Grecco did not consider fair use before authorizing MGP to send the takedown notices to TTI.	Exh. 4, Grecco Depo. at 211:1-4 (Q: Did your company consider the doctrine of fair use before issuing the takedown notice with respect to this first video? A: No.); 211:9-15 (Q: So is it fair to say, then, sir, that before your company issued any of the takedown notices in this case, that you didn't consider whether—you didn't consider fair use? A: I still don't consider fair use.); 260:18-24 (Q: And its your position that the allegations of infringement in these DMCA notices were true and accurate even though you did not consider fair use before sending these DMCA notices; right? A: Correct. I still don't consider fair use; correct.)
255. Grecco testified that the fair use defense is "BS"	Exh. 4, Grecco Depo. at 211:1-8.

Undisputed Fact	Evidence
256. Grecco testified that MPG refers to the fair use defense as the “FU defense.”	Exh. 4, Grecco Depo. at 211:1-8.

The Asserted Works were Not Used Commercially

Undisputed Fact	Evidence
257. Plaintiff does not know when TikTok users who engaged with the alleged infringing content joined TikTok.	Exh. 4, Grecco Depo. at 254:6-10 (Q: And with respect to all of these individuals that have either liked, commented, shared, or saved any of the videos, you have no idea when they joined TikTok? A: That is correct.).
258. Plaintiff does not know why TikTok users who engaged with the alleged infringing content joined TikTok.	Exh. 4, Grecco Depo. at 254:11-13 (Q: And you have no idea why they joined TikTok; right? A: That is correct.).
259. Plaintiff has no facts to suggest that TikTok users were drawn to TikTok because of the alleged infringing content.	Exh. 4, Grecco Depo. at 254:14-20 (Q: And you’re not aware, again, with respect to all of these individuals that either liked, commented, shared, or saved any of the videos reflected in Exhibit 21, you have no facts to suggest that they were drawn to TikTok because of these videos; right? A: That is correct.); 233:20-23; 249:4-9; 252:3-6.
260. None of the Asserted Works have been used in an advertisement on TikTok.	Exh. 4, Grecco Depo. at 127:11-12 (“none of my images have been used in an ad on TikTok”); 133:2-3 (“There are—no one is saying that my work was used in an advertisement . . .”).
261. None of the Asserted Works have been used on TikTok Shop.	Boutros Decl. ¶ 13.
262. None of the Asserted Works have been used to promote or sell products on TikTok.	Boutros Decl. ¶ 13.

Undisputed Fact	Evidence
263. TTI did not generate any funds from the alleged infringement.	Dkt. 68-2, Ex. A, Boutros Depo. at 95:3-7.
264. TTI did not generate any revenue from the alleged infringement.	Boutros Decl. ¶ 14.
265. TTI did not receive any financial benefit from the alleged infringement.	Dkt. 68-2, Boutros Depo. at 95:8-10 (Q: So they did not receive any financial benefit here? A: No.); Exh. 6, Boutros Depo 97:5-12. Boutros Decl. ¶¶ 13-14.

Defendant's Licensing of the Asserted Works

Undisputed Fact	Evidence
266. "No one uses" the shopping cart tool on Plaintiff's website to license photos.	Exh. 4, Grecco Depo. at 265:21-266:11.
267. Plaintiff generated zero revenue through the shopping cart tool in 2021, 2022, 2023, or 2024.	Exh. 4, Grecco Depo. at 266:1-267:1.
268. Plaintiff has never licensed an asserted work through the shopping cart tool.	Exh. 4, Grecco Depo. at 266:25-267:8.
269. Grecco testified he does not know how much revenue Plaintiff derived from the Asserted Works.	Exh. 4, Grecco Depo. at 64:10-15; 67:6-11; 72:9-13; 75:8-17; 79:24-80:3; 84:10-19; 85:13-17; 92:2-7; 99:2-11; 112:8-16.
270. Most of the license agreements produced by Plaintiff in this case are "retroactive" licenses.	Exh. 4, Grecco Depo. at 296:8-14; 297:22-25 (testifying that Exhibits 29 through 40 to the Grecco deposition are retroactive licenses); 284:24-285:6; 288:11-15; 290:16-291:4; 298:16-22; 299:14-22; 300:7-301:4.
271. Retroactive licenses are the result of Plaintiff locating an unauthorized use of its photographs and contacting the user to negotiate a license.	Exh. 4, Grecco Depo. at 284:24-285:6; 290:16-291:4; 298:16-22; 299:14-22; 300:7-301:4.

Undisputed Fact	Evidence
272. Plaintiff's retroactive licenses are negotiated after infringement began.	Exh. 4, Grecco Depo. at 292:16-21 ("Every one of these is a negotiation. So if they want to pay more and continue to use the photograph, they pay more. Like, every one of these is a negotiation based on the size of the company, the size of the platform, so on and so forth."); 300:10-17 ("we sent them a demand letter that they need to pay for our content. Whether they get to keep it up or not is a matter of how much they're going to pay and what the negotiation is.")
273. Plaintiff has filed over 100 copyright litigation lawsuits in federal court.	Exh. 4, Grecco Depo. at 140:18-24. Exh. 5, Yamada Depo. at 41:15-42:5.
274. Plaintiff has generated more than \$5 million from its copyright litigation lawsuits.	Exh. 4, Grecco Depo. at 195:25-196:6.

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1 Dated: September 5, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2025, a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system, which shall send notification of such filing to all counsel of record. Any counsel of record who has not consented to electronic service through the Court's CM/ECF system will be served by electronic mail.

/s/ Connor J. Hansen

Connor J. Hansen